

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DALE HOLMGREN,

Plaintiff,

vs.

SUN LIFE AND HEALTH INSURANCE
COMPANY,

Defendant.

CASE NO. 17-cv-03028-YGR

**ORDER RE: PENDING CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 41, 42

The Court has reviewed parties' cross-motions for summary judgment. (Dkt. Nos. 41, 42.) Based on the motions and their supporting filings, it appears as though both parties wish to proceed to a trial under Federal Rule of Civil Procedure 52. (*See* Dkt. No. 41 at 22 n.3; Dkt. No. 42 at 23-24 (describing burden of proof rather than summary judgment standard).) *See Murphy v. Cal. Physicians' Service*, Case No. 14-cv-2581-PJH, 2017 WL 1330636 at *20-21 (N.D. Ca. April 11, 2017); *see also Kearney v. Standard Ins. Co.*, 175F.3d 1084, 1095 (9th Cir. 1999) (*en banc*); *Muniz v. Amec Const. Management, Inc.*, 623 F.3d 1290, 1295-96 (9th Cir. 2010). However, defendant has not explicitly confirmed whether it agrees to proceed pursuant to Rule 52. (*See* Dkt. No. 42.) Accordingly, by no later than **Thursday, August 30, 2018**, defendant Sun Life Health Insurance Company shall file a notice confirming or objecting to the same.


Additionally, each party **SHALL** submit, by no later than **Thursday, August 30, 2018**, a statement of no more than five (5) pages addressing the following issues: (1) the manner in which the parties request that the Court proceed, either a Rule 52 trial on the administrative record¹ or a Rule 52 trial on the record as well as live testimony and (2) parties' position on live testimony, including the standard by which the parties believe the Court should determine whether live

¹ The Court notes that large portions of defendant's "Exhibit A," filed in support of their opposition and cross-motion for summary judgment (Dkt. No. 42-1), are illegible. To the extent that these document are not found in the administrative record submitted by plaintiff at Docket Number 39, defendant shall file legible copies no later than **Thursday, August 30, 2018**.

1 testimony is necessary or appropriate.² Moreover, the parties should be prepared to discuss these
2 issues at the hearing currently scheduled for September 4, 2018.

3 **IT IS SO ORDERED.**

4 Dated: August 24, 2018


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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² The Court notes that plaintiff has requested permission to testify at any dispositive hearing. (Dkt. No. 48 at 2.)